

Filed for intro on 02/08/2001  
SENATE BILL 816 By  
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HOUSE BILL 1043  
By Winningham

AN ACT to amend Tennessee Code Annotated, Title 3; Title 4; Title 8; Title 9; Title 10; Title 16; Title 33; Title 36; Title 37; Title 49; Title 55; Title 68 and Title 71, relative to the development of a coordinated system within state government to provide necessary and essential services to children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, or other appropriate title and chapter of the Tennessee Code Annotated, as determined by the code commission, is amended by adding Sections 2 through 15 of this act as a new part thereto.

SECTION 2. This act shall be known and may be cited as "The Tennessee Education and Children's Services Act of 2001".

SECTION 3. The purpose of this act is to reduce duplicative efforts and fully utilize resources by creating an integrated, coordinated, simplified system of providing needed services to children in Tennessee through the consolidation and collaboration of programs for the education, well-being, and support of children.

SECTION 4. There is hereby created the department of education and children's services.

SECTION 5. The department shall:

(1) Perform such duties as are set forth in title 49 and shall administer such laws as the general assembly from time-to-time may enact.

(2) Through the department of education and children's services, the state of Tennessee government, in cooperation with juvenile courts, local communities, schools and families will strive to provide timely, appropriate and cost-effective services for children in state custody and at risk of entering state custody so that these children can reach their full potential as productive, competent and healthy adults. The department is created to provide services to those children who are unruly, delinquent, dependent and neglected, and their respective families, as well as for children who are at imminent risk and in need of services to prevent entry into state custody, who are in state custody pending family reunification or other permanent placement, or as otherwise may be required for such children and their families pursuant to state law. The focus of the services shall be to preserve the relationship between the child and the family by providing, whenever possible, services in the community where the child lives and by providing the services in a setting which is the least restrictive and, yet, the most beneficial. For the children it serves, the department shall strive to:

(3)

(A) Protect children from abuse, mistreatment or neglect;

(B) Provide prevention, early intervention, rehabilitative and educational services;

(C) Pursue appropriate and effective behavioral and mental health treatment; and

(D) Ensure that health care needs, both preventive and practical, are met.

(4) The department will work to preserve the safety and protect the standards in Tennessee communities through efforts to combat delinquency and other social ills

concerning young people. The department shall work to continuously improve the management and coordination of services for the children and families of Tennessee identified in this section by ensuring thorough evaluations and assessments, appropriate and effective service delivery, timely permanency planning and supportive supervision and monitoring of the progress of children discharged from state custody.

SECTION 6. The department of education and children's services shall be under the charge and general supervision of the commissioner of education and children's services.

SECTION 7. The commissioner of education and children's services, or his or her designee, has the following powers and duties in addition to such other powers and duties as may be specifically provided by law in this act, transferred by this act or otherwise provided by law:

(1) Select and recommend to the appropriate state officials the employment or transfer of all personnel required for the operation of the department, except, however, the transfer of any employees pursuant to this chapter or the initial organization of the new department pursuant to this chapter shall not result in any impairment, interruption or diminution of employee rights, privileges, salary, benefits, leave accumulation or employment; and further, such transfer of employees pursuant to this chapter or initial organization of the new department pursuant to this chapter shall not result in a contract employee supervising a career service employee or conducting a job performance evaluation for a career service employee;

(2) Recommend to the appropriate state officials the salaries and compensation of all officers and employees of the department;

(3) Make and adopt rules, regulations and policies for the government, management and supervision of state education and children's services agencies or facilities, and/or children's services; prescribe the powers and duties of the officers and employees thereof; and provide for the care of children served by the department;

provided, however, such rules shall be consistent with and subject to licensing approval authority of any other state agency which has responsibility for licensing or approval of any portion of program services or facilities provided by the department;

(4)

(A) Publish, in accordance with the rules, regulations, policies and procedures of the state publication committee, an annual report on the operation of the department and the services and programs under its supervision by January 31 of each year and furnish the report to the governor, members of the general assembly, other persons and relevant entities that may request the report, such as the Tennessee council of juvenile and family court judges and the Tennessee commission on children and youth, and others as the governor may consider appropriate;

(B) Such annual report shall contain information regarding foster care services, including definitions, racial composition, and statutory or regulatory authority, where appropriate, as to the following:

(i) Placement Information. Total number of children in foster care by region and segmented by:

(a) Level of placement (I-IV);

(b) Placement type (department of education and children's services foster home, continuum contracts, pre-adoptive or adoptive, diagnostic shelter, emergency shelter, medical or surgical hospital, miscellaneous, specialized residential school, trial home visit);

(c) Average length of custody; and

(d) Number of department of education and children's services foster care placements currently available;

(ii) Social Services Caseload Information. Total social services case managers by region and segmented by:

(a) Case manager slots;

(b) Actual filled slots;

(c) Average salary;

(d) Average social services caseload; and

(e) Range of social services caseload;

(iii) Legal Support by Region. Total number of attorneys and paralegal staff:

(a) Number of attorney slots;

(b) Number of attorney filled slots;

(c) Number of paralegal slots; and

(d) Number of paralegal filled slots.

(5) Direct the placement of children in appropriate state programs and/or facilities, and/or contract programs or facilities in conformity with constitutional, statutory or regulatory requirements;

(6) Assume general responsibility for the proper and efficient operation of the department, its services and programs. The commissioner may establish such divisions and units within the department as necessary for its efficient operation;

(7) Promulgate necessary rules and regulations to govern administrative searches and inspections of employees of the department, juveniles in the custody of the department and visitors to facilities of the department. Such rules shall provide guidelines and standards for the manner in which the searches authorized by this subdivision shall be conducted;

(8) Promulgate rules and regulations concerning drug testing which are not inconsistent with the provisions of § 41-1-122;

(9)

(A) Conduct investigations as deemed necessary to the performance of the commissioner's duties, and to that end, the commissioner or the

commissioner's designee shall have the same power as a judge of the court of general sessions to administer oaths and to enforce the attendance and testimony of witnesses and the production of books and papers;

(B) The commissioner shall keep a record of such investigations, stating the time, place, nature or subject, witnesses summoned and examined, and the commissioner's conclusions;

(C) In matters involving the conduct of an office, a stenographic report of the evidence may be taken and a copy thereof with all documents introduced kept on file at the office of the department;

(D) The fees of witnesses for attendance and travel shall be the same as in the circuit court, but no officer or employee of the institution under investigation shall be entitled thereto;

(E) Any judge of the circuit or chancery court, either in term time or in vacation, upon application of the commissioner, may compel the attendance of witnesses, the production of books or papers and the giving of testimony before the commissioner, by a judgment for contempt or otherwise, in the same manner as in the cases before a circuit or chancery court;

(10)

(A) The commissioner shall have the authority to conduct or cause to be conducted any administrative hearings relating to any factual determinations which the department is authorized or required to make pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, or pursuant to any other hearing procedures required by law or which may be necessary to provide due process procedures for individuals affected by the programs administered by the department;

(B) The commissioner, or any officer or employee of the department upon written authorization from the commissioner, has the power to administer oath and affirmations, take depositions, issue subpoenas and require the production of documents and any books and records that may be necessary in the conduct of such hearings;

(11) Perform all duties and exercise all authority set forth in title 68, chapter 2, part 11, regarding community services agencies;

(12)

(A) Establish an education and a children's services advisory council having fifteen (15) members appointed by the commissioner to act in an advisory capacity on any matter within the jurisdiction of the department. Appointees to the council shall include, but not be limited to, representatives of local law enforcement, mental health professionals, local education agencies, juvenile court officials, social workers, educators, health care providers, consumers of services such as parents, foster parents or family members of children who are or have been recipients of services from the department, child advocates, persons having specialized knowledge or experience and public and private agencies which provide services to children. The members of the council shall be appointed with a conscious intention of reflecting a diverse mixture with respect to race and gender. Each community services agency region shall be represented by at least one (1) individual on the council;

(B) The term of a member of the education and children's services advisory council shall be three (3) years with the terms staggered so as to replace no more than one third (1/3) of the members each year. Members of the council may be reappointed after their terms expire. Members of the council shall continue in office until the expiration of their terms for which they were



respectively appointed and until such time as their successors are appointed.

Vacancies occurring on the council by reasons of death or resignation shall be filled in the same manner as a regular appointment for the remainder of the unexpired term;

(C) Members shall be reimbursed for their actual expenses for attending meetings of the council. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter;

(D) The duties of the council shall be to advise the commissioner regarding issues pertaining to the purpose of the department and its work when requested by the commissioner. Annually, the council shall elect one (1) of its members to serve as chair of the council and one (1) member to serve as secretary. Minutes of each meeting shall be kept and sent to the commissioner. Any officer may be elected to consecutive terms;

(13) Establish from time-to-time committees composed of representatives from the public and/or private sectors for such purposes and durations as may be deemed appropriate or required by the commissioner. Members of such committees shall be reimbursed for their actual expenses for attending meetings of their respective committees. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(14)

(A) Establish and administer, jointly with the state treasurer, a scholarship program for the sole purpose of providing financial assistance to foster children wishing to pursue opportunities in higher education;

(B) The scholarship program established and administered pursuant to subdivision (14)(A) shall be funded from state appropriations and from such individual and corporate grants, donations and contributions as the commissioner shall solicit and receive specifically for such purpose.

#### SECTION 8.

(a) The department of education and children's services shall be organized in such divisions as the commissioner, with the approval of the governor, may find necessary.

(b) The office of administrator is hereby created for each division created by the commissioner who shall have the general administrative authority of such division.

(c) In addition to other duties, each administrator shall be responsible for preparing and submitting to the commissioner of education and children's services an annual budget for the division such administrator heads.

(d) The transfer of the functions and activities of the various departments and or programs to the department of education and children's services shall not, because of the transfer, result in any change in compensation, benefits or civil service status. Such rights, benefits and compensation shall continue without any impairment, interruption or diminution; provided, the department may engage in disciplinary actions or reductions in force as provided for in law. The commissioner of personnel is authorized to enforce this section and shall determine if the rights, benefits and compensation of an employee are to be impaired, interrupted or diminished. Any employee aggrieved by any impairment in violation of this section shall have the right to seek redress through the grievance procedure established in § 8-30-328.

#### SECTION 9.

(a) All programs administered by the department of education and by the department of children's services prior to the effective date of this act shall be transferred to and, administered by, the department of education and children's services.

(b) All staff, staff positions, offices, equipment, supplies, property, facilities, funds and other resources of any program under the department of education and the department of children's services shall be transferred to the department of education and children's services.

(c)

(1) References to the department of education and the department of children's services appearing elsewhere in Tennessee Code Annotated shall be deemed to be references to the department of education and children's services.

(2) The Tennessee code commission is directed to change references to the existing titles of officials, offices, departments, agencies and entities, whenever they appear in Tennessee Code Annotated, to conform to the titles of officials, offices, departments, agencies and entities created by the provisions of this act.

(3) The code commission is authorized to make grammatical changes in the provisions of this code to effectuate such changes.

(d)

(1) All contracts and leases entered into by the department of education or the department of children's services with any entity, corporation, agency, enterprise, association or person, prior to the effective date of this act, shall continue in full force and effect as to all provisions in accordance with the terms and conditions of such contracts or leases in existence on the effective date of this act, to the same extent as if such contracts or leases had originally been entered into by and between such entity, corporation, agency, enterprise,

association or person and the department of labor and workforce development, unless and until such contracts or leases expire or are duly amended, modified or terminated by the parties thereto.

(2) The provisions of subdivision (d)(1) shall not be implemented in any manner which violates the prohibition against the impairment of contract obligations as contained in the Constitution of Tennessee, art. 1, § 20.

(3) All rules, regulations, policies, orders and decisions promulgated or issued by the department of education or the department of children's services prior to, and in effect on the effective date of this act shall remain in force and effect and shall be administered and enforced by the department of education and children's services until duly amended, repealed, expired, modified or superseded.

(4) On the effective date of this act, all references to the department of education or the department of children's services contained in any forms, legal documents, notices and papers of any kind in the possession of or issued by the department of education or the department of children's services shall be deemed references to the department of education and children's services, and any actions thereon may be brought or maintained in the name of the department of education and children's services as the successor in interest and shall receive the same force and effect as if brought in the name of the predecessor department.

(e) The transfer of the functions and activities of the department of education and the department of children's services to the department of education and children's services shall not, because of the transfer, result in any impairment, interruption, or diminution of the regulatory rights and privileges of the department of education or the department of children's services.

SECTION 10. On and after the effective date of this act, the department of education and children's services, through its commissioner, has the authority to receive, administer, allocate, disburse and supervise any grants and funds from whatever sources, including, but not limited to, the federal, state, county and municipal governments on a state, regional, county or any other basis, with respect to any programs and/or responsibilities outlined in this part or assigned to the department by law, regulation or order.

SECTION 11. The department of education and children's services, through its commissioner, has the authority, consistent with the statutes and regulations pertaining to the programs and functions transferred herein, to modify or rescind orders, rules and regulations, decisions or policies heretofore issued and to adopt, issue or promulgate new orders, rules and regulations, decisions or policies as may be necessary for the administration of the programs or functions herein transferred.

SECTION 12. In compliance with all federal and state laws and constitutional provisions prohibiting discrimination, including, but not limited to, the Civil Rights Act of 1964, Title VI, no person, on the grounds of race, color, national origin, age or sex shall be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity operated by the department of education and children's services. This includes, but is not limited to, contracts for services, employment or services to the department's clients.

SECTION 13. The commissioner of education and children's services shall make a progress report to the governor, the senate and house education committees and the house children and family affairs committee prior to January 1, 2002.

SECTION 14. Tennessee Code Annotated, Section 4-3-101, is amended by deleting items (3) and (7) in their entirety and by adding the following language as a new item thereto:

( ) Department of education and children's services;

SECTION 15. Tennessee Code Annotated, Section 4-3-104, is amended by adding the following new subsections thereto:

(y) References to the department of education are deemed references to the department of education and children's services.

(z) References to the department of children's services are deemed references to the department of education and children's services.

SECTION 16. Tennessee Code Annotated, Section 4-3-111, is amended by deleting items (3) and (7) in their entirety and by adding the following as an appropriately designated item thereto:

( ) Commissioner of education and children's services, for the department of education and children's services;

SECTION 17. Tennessee Code Annotated, Section 4-3-113, is amended by adding the following new subsections thereto:

(x) References to the commissioner of education are deemed references to the commissioner of education and children's services.

(y) References to the commissioner of children's services are deemed references to the commissioner of education and children's services.

SECTION 18. Tennessee Code Annotated, Section 4-29-224(a), is amended by adding a new item thereto, as follows:

( ) Department of education and children's services;

SECTION 19. Tennessee Code Annotated, Section 4-29-227(a), is amended by deleting items (4) and (19) in their entirety and by substituting instead the following:

( ) Standards committee, department of education and children's services;

SECTION 20. Tennessee Code Annotated, Section 4-29-224(a), is amended by deleting item (28) in its entirety.

SECTION 21.

(a) Tennessee Code Annotated, Title 8, is amended by deleting the words “department of education” and “department of children’s services” wherever they may be found and by substituting instead the words “department of education and children’s services”.

(b) Tennessee Code Annotated, Title 8, is further amended by deleting the words “commissioner of education” and “commissioner of children’s services” wherever they appear and by substituting instead the words “commissioner of education and children’s services”.

#### SECTION 22.

(a) Tennessee Code Annotated, Title 9, is amended by deleting the words “department of education” and “department of children’s services” wherever they may be found and by substituting instead the words “department of education and children’s services”.

(b) Tennessee Code Annotated, Title 9, is further amended by deleting the words “commissioner of education” and “commissioner of children’s services” wherever they appear and by substituting instead the words “commissioner of education and children’s services”.

#### SECTION 23.

(a) Tennessee Code Annotated, Title 10, is amended by deleting the words “department of education” and “department of children’s services” wherever they may be found and by substituting instead the words “department of education and children’s services”.

(b) Tennessee Code Annotated, Title 10, is further amended by deleting the words “commissioner of education” and “commissioner of children’s services” wherever they appear and by substituting instead the words “commissioner of education and children’s services”.

#### SECTION 24.

(a) Tennessee Code Annotated, Title 16, is amended by deleting the words “department of education” and “department of children’s services” wherever they may be found and by substituting instead the words “department of education and children’s services”.

(b) Tennessee Code Annotated, Title 16, is further amended by deleting the words “commissioner of education” and “commissioner of children’s services” wherever they appear and by substituting instead the words “commissioner of education and children’s services”.

#### SECTION 25.

(a) Tennessee Code Annotated, Title 33, is amended by deleting the words “department of education” and “department of children’s services” wherever they may be found and by substituting instead the words “department of education and children’s services”.

(b) Tennessee Code Annotated, Title 33, is further amended by deleting the words “commissioner of education” and “commissioner of children’s services” wherever they appear and by substituting instead the words “commissioner of education and children’s services”.

#### SECTION 26.

(a) Tennessee Code Annotated, Title 36, is amended by deleting the words “department of education” and “department of children’s services” wherever they may be found and by substituting instead the words “department of education and children’s services”.

(b) Tennessee Code Annotated, Title 36, is further amended by deleting the words “commissioner of education” and “commissioner of children’s services” wherever



they appear and by substituting instead the words “commissioner of education and children’s services”.

#### SECTION 27.

(a) Tennessee Code Annotated, Title 37, is amended by deleting the words “department of education” and “department of children’s services” wherever they may be found and by substituting instead the words “department of education and children’s services”.

(b) Tennessee Code Annotated, Title 37, is further amended by deleting the words “commissioner of education” and “commissioner of children’s services” wherever they appear and by substituting instead the words “commissioner of education and children’s services”.

#### SECTION 28.

(a) Tennessee Code Annotated, Title 49, is amended by deleting the words “department of education” and “department of children’s services” wherever they may be found and by substituting instead the words “department of education and children’s services”.

(b) Tennessee Code Annotated, Title 49, is further amended by deleting the words “commissioner of education” and “commissioner of children’s services” wherever they appear and by substituting instead the words “commissioner of education and children’s services”.

#### SECTION 29.

(a) Tennessee Code Annotated, Title 55, is amended by deleting the words “department of education” and “department of children’s services” wherever they may be

found and by substituting instead the words “department of education and children’s services”.

(b) Tennessee Code Annotated, Title 55, is further amended by deleting the words “commissioner of education” and “commissioner of children’s services” wherever they appear and by substituting instead the words “commissioner of education and children’s services”.

#### SECTION 30.

(a) Tennessee Code Annotated, Title 68, is amended by deleting the words “department of education” and “department of children’s services” wherever they may be found and by substituting instead the words “department of education and children’s services”.

(b) Tennessee Code Annotated, Title 68, is further amended by deleting the words “commissioner of education” and “commissioner of children’s services” wherever they appear and by substituting instead the words “commissioner of education and children’s services”.

#### SECTION 31.

(a) Tennessee Code Annotated, Title 71, is amended by deleting the words “department of education” and “department of children’s services” wherever they may be found and by substituting instead the words “department of education and children’s services”.

(b) Tennessee Code Annotated, Title 71, is further amended by deleting the words “commissioner of education” and “commissioner of children’s services” wherever they appear and by substituting instead the words “commissioner of education and children’s services”.

SECTION 32. Tennessee Code Annotated, Section 37-5-101, is amended by deleting such section in its entirety.

SECTION 33.

(a) Tennessee Code Annotated, Section 37-5-104, is amended by deleting such section in its entirety.

(b) Tennessee Code Annotated, Section 37-5-105, is amended by deleting such section in its entirety.

SECTION 34. Any provision of this act, or the application thereof, which is inconsistent with federal law, rule or regulation shall be deemed to be construed as being consistent with federal law, rule or regulation.

SECTION 35. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be several.

SECTION 36. This act shall take effect on becoming a law, the public welfare requiring it, and the provisions thereof shall be fully implemented no later than January 1, 2002, the public welfare requiring it.